

**Officer Involved Shooting of Francisco Flores
Pasadena Police Department**

Officer Omar Elhosseiny, #2316

J.S.I.D. File #16-0176



JACKIE LACEY

District Attorney

Justice System Integrity Division

March 2, 2017

MEMORANDUM

TO: CHIEF PHILLIP L. SANCHEZ
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Pasadena, California 91101

CAPTAIN STEVEN KATZ
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FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Francisco Flores
J.S.I.D. File #16-0176
P.P.D. File #16005046
L.A.S.D. File #016-00041-3199-055

DATE: March 2, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the April 8, 2016, non-fatal shooting of Francisco Flores by Pasadena Police Department (PPD) Officer Omar Elhosseiny. We have concluded that Officer Elhosseiny acted lawfully in what he reasonably believed was the need for self-defense.

The District Attorney's Command Center was notified of the shooting at 11:46 a.m. on April 8, 2016. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, firearms analysis reports, photographic evidence and witness statements submitted to this office by Los Angeles County Sheriff's Department (LASD) Homicide Bureau Detectives Michael Valento and John Duncan. The voluntary statement of Officer Elhosseiny was considered in this analysis.

FACTUAL ANALYSIS¹

On April 8, 2016, at approximately 9:15 a.m., while on routine patrol in a marked black and white vehicle, PPD Officers Trevon Sailor and Omar Elhosseiny observed a silver Mustang they recognized to be associated with a residence known for gang activity by the "Pasadena Latin Kings"

¹ Unless otherwise referenced, the details of the officer involved shooting were provided by the voluntary statements of Elhosseiny and Sailor.

street gang.² Sailor recognized the driver of the Mustang as Edgar Miron, a member of the gang.³ They first observed the Mustang at the intersection of Marengo Avenue and Orange Grove Boulevard. They followed the Mustang and observed that it failed to stop behind the white limit line at the stop sign located at the intersection of Ashtabula Street and Los Robles Avenue, before turning northbound onto Los Robles Avenue.⁴ Sailor activated the patrol vehicle's emergency lights in an effort to conduct a traffic stop.

The Mustang continued to travel north on Los Robles Avenue, past Buckeye Street and sped through the intersection at Mountain Street at approximately 35-40 miles per hour. The officers activated their siren in addition to emergency lights. At this point, the Mustang slowed in order to make a left turn onto Adena Street. Upon turning onto Adena Street, the Mustang pulled over to the curb just west of Los Robles Avenue. Sailor stopped the patrol vehicle behind the Mustang at an approximate 45-degree angle. As Elhosseiny exited the passenger side of the patrol vehicle, the front passenger door of the Mustang quickly opened and a male, later identified as Francisco Flores, exited and began running east on Adena Street toward Los Robles Avenue. Elhosseiny chased Flores on foot.⁵ Sailor exited the patrol vehicle and approached the driver's side door of the Mustang. Suddenly the Mustang fled the location.⁶

As Elhosseiny was chasing Flores, he saw the letters "PLK" tattooed on the back of Flores' head.⁷ Flores continued running off the sidewalk and into the roadway of Los Robles Avenue. While running after Flores, Elhosseiny saw Flores remove his hands from his front waistband and Elhosseiny observed a black semi-automatic handgun in Flores' right hand.⁸ As Flores continued running, he moved both his arms back and forth in a standard running motion while holding the handgun in his right hand. Elhosseiny drew his duty weapon while continuing to maintain a distance of approximately five feet between himself and Flores.⁹ Fearing for his safety, Elhosseiny broadcasted over his radio that he was in foot pursuit, released his radio activation switch and yelled out loudly, "He's got a gun!"¹⁰

² Sailor was driving the patrol vehicle and Elhosseiny was in the front passenger seat.

³ Officers saw three individuals in the Mustang. Flores was in the front passenger seat and Flores' girlfriend, Berenice Balderas, was sitting in the back seat.

⁴ The Dashcam in the patrol vehicle recorded the Vehicle Code violation. The stop sign and limit line are clearly visible at the intersection. The rear tires of the Mustang were touching the limit line with the front tires clearly past the line in violation of Vehicle Code § 22450.

⁵ Elhosseiny was dressed in a standard PPD, dark blue, Class B uniform, consisting of PPD patches on both upper arms, and a "shield" style badge affixed to his chest. He was wearing an external Kevlar vest with a cloth PPD badge affixed to the front, and cloth tags bearing his name and the word "POLICE." The back of the vest was affixed with a large patch bearing the word "POLICE" that covered the majority of the back side. Attached to the front of the external vest was a radio, pepper spray and three magazine pouches. Elhosseiny wore a standard gun belt which supported his duty weapon, an expandable baton, flashlight and handcuffs. Attached to his left leg was a Taser. Elhosseiny's duty weapon was a .45 caliber, Glock 21 which was loaded with thirteen cartridges in the magazine and one cartridge in the chamber.

⁶ Dashcam video from the patrol vehicle recorded Sailor exiting the patrol vehicle and approaching the driver's side of the Mustang before it fled the location. The Mustang was found abandoned a few blocks away on Garfield Avenue. Both Miron and Balderas were located and arrested later that day.

⁷ Flores was later identified as a documented PLK gang member who is known by the moniker "Knuckles."

⁸ Elhosseiny was five feet behind Flores when he first saw the handgun and could clearly see the stock and barrel of the gun as Flores clutched it.

⁹ During the entire foot pursuit, Elhosseiny remained behind and slightly offset to the right side of Flores as a safety tactic to avoid being in a direct line of fire.

¹⁰ Elhosseiny did this in the hope of alerting Sailor, who was no longer in his view, to the fact that Flores was fleeing while armed.

Flores continued fleeing in a northeast direction in the middle of Los Robles Avenue with Elhosseiny chasing him. While holding the handgun in his right hand, Flores placed his right hand over his left shoulder, looked back at Elhosseiny, and fired one time at him. Elhosseiny saw the muzzle flash of the handgun as it fired. Elhosseiny returned fire, continuing to shoot his weapon until it was out of ammunition. Flores continued to shoot at Elhosseiny. Elhosseiny activated his magazine release in order to extract the empty magazine and began walking in a northerly direction while loading another magazine into his firearm. He pointed his weapon at Flores and fired once more. Flores fell onto the east sidewalk of Los Robles Avenue. As Flores fell, a handgun flew out of his hand and landed nearby on the sidewalk. Elhosseiny approached Flores, pointed his weapon at him and directed him to place his arms in an outstretched position. Sailor arrived at this location, handcuffed Flores, inspected his body for bullet strikes, and broadcasted on his radio that an officer involved shooting had taken place.¹¹ Elhosseiny broadcasted the information a second time, described the Mustang and requested medical personnel to treat Flores. Sailor stayed with Flores awaiting medical personnel while Elhosseiny ran back to the patrol vehicle and drove it to where Sailor and Flores were located.¹² Elhosseiny retrieved Flores' firearm from the sidewalk, rendered it safe by removing the magazine and ejecting a cartridge from the chamber, and placed the firearm, magazine and cartridge on the trunk of another police vehicle that had arrived at the scene.¹³

Flores was transported to Huntington Memorial Hospital by Pasadena Fire Paramedics. Flores' eyes were closed while he was lying on a gurney in the ambulance. Paramedics asked him what happened. Flores kept his eyes closed and replied, "Hey fuck you guys. I aint saying shit. I want a lawyer." Flores was taken to the emergency room at the hospital and immediately treated for a gunshot wound to the lower left portion of his back. Flores sustained internal damage to his left lung, left kidney, stomach and renal system. A single bullet was extracted from Flores' lower left back area.¹⁴

On April 14, 2016, while Flores was still hospitalized, investigators attempted to interview him after Flores waived his Miranda rights. He was lucid but said he was tired and asked investigators to return the following day. On April 15, 2016, investigators returned to the hospital to question Flores. Flores told investigators that on the day of the incident, Miron picked him and his girlfriend up to drive them to a "CVS" store. When asked if he recalled the Mustang being pulled over by PPD patrol officers, he stated he did not recall and that he felt "woozy" from the medication he was given. When asked if he wanted to get his side of the story out, Flores replied, "Not until I see a lawyer." After indicating he wanted a lawyer, an investigator asked Flores if he wanted to give his side of the story as to why he shot at Officer Elhosseiny. Flores replied, "I don't know what you're talking about." Flores was charged with attempted murder of a police officer, assault on a police officer with a semiautomatic firearm, possession for sale of methamphetamine and possession of a firearm by a felon.¹⁵

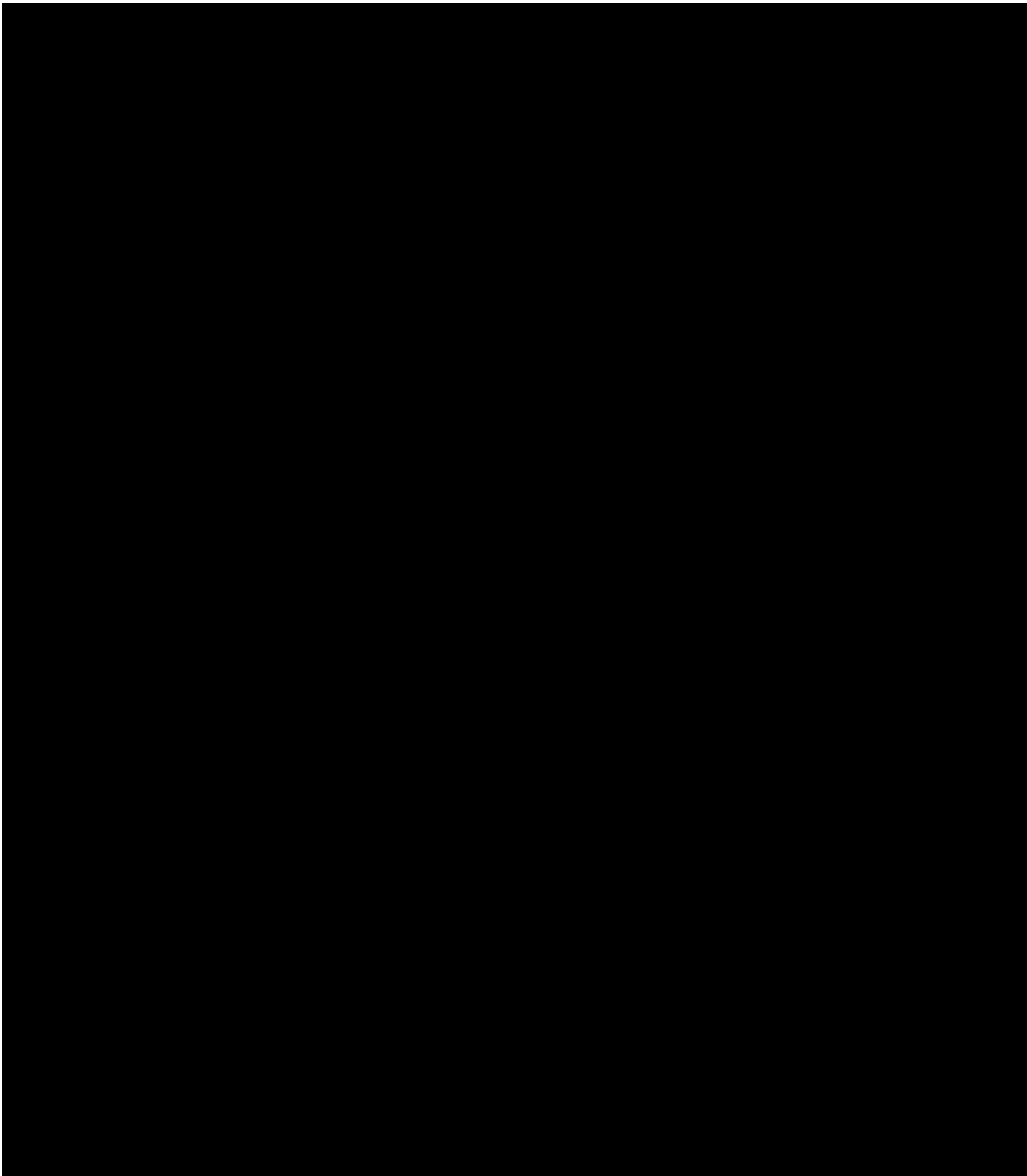
¹¹ During a search of Flores, Sailor recovered one baggie of methamphetamine, one baggie of cocaine and one baggie containing both methamphetamine and marijuana from Flores' front left pants pocket. Sailor recovered two cell phones from Flores' right front pants pocket.

¹² The officers were concerned that the patrol vehicle was left unattended on Adena Street.

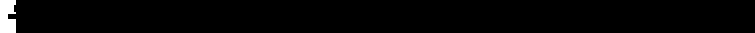
¹³ There were six cartridges in the magazine.

¹⁴ Forensic testing revealed this bullet was fired from Elhosseiny's Glock firearm.

¹⁵ Case GA098503 is pending trial in Department E in the Pasadena Superior Court.



¹⁶ On May 5, 2016, Miron pled guilty to one felony count of evading in violation of Vehicle Code section 2800.1(A) and was sentenced to three years of formal probation and 90 days in the county jail.



Statement of Ricky C [REDACTED]

At the time of the incident, Ricky C [REDACTED] was traveling alone in his vehicle southbound on Los Robles Avenue approaching Adena Street. As he approached the intersection, C [REDACTED] saw a police vehicle drive northbound on Los Robles Avenue and then make a left turn westbound onto Adena Street. A few seconds after the police vehicle turned onto Adena Street, C [REDACTED] saw a

[REDACTED]

“youngster,” later determined to be Flores, running from Adena Street, northbound on Los Robles Avenue with a uniformed police officer, Elhosseiny, chasing after him on foot.¹⁹ Flores was approximately 30-40 feet ahead of the officer and was running in the middle of the street. As Flores continued to run up Los Robles Avenue, he ran directly next to and past C [REDACTED]’s driver side door.²⁰ When Flores was approximately 10-15 feet past the rear of C [REDACTED]’s vehicle, C [REDACTED] saw Flores run from the middle of the street to the east sidewalk of Los Robles Avenue. C [REDACTED] saw Flores look backwards toward the pursuing officer, move one of his arms behind him, and begin firing a handgun at the officer. C [REDACTED] did not recall in which hand Flores held the gun, but he clearly saw the handgun and the muzzle flash from the barrel as it discharged four to five times. At this point, C [REDACTED] ducked slightly down toward the center console of his vehicle, but still continued to watch Flores. C [REDACTED] saw Elhosseiny “set himself” approximately 10-15 feet in front of C [REDACTED]’s vehicle and with two hands on his weapon, fire at Flores. C [REDACTED] described this portion of the encounter as a “gunfire exchange.”

At this point, C [REDACTED] pulled his vehicle along the west curb line of Los Robles Avenue and exited his car. He then saw another officer, later determined to be Sailor, run around the corner of Adena Street and onto Los Robles Avenue.²¹ Sailor and Elhosseiny began to search Flores who was lying on the ground. C [REDACTED] was unable to see the handgun that he had previously seen in Flores’ hand. C [REDACTED] observed rescue personnel transport Flores from the scene. He observed that Elhosseiny appeared to be “shaken up.” C [REDACTED] approached Elhosseiny, asked if he was okay and stated to him, “Damn, he just tried to kill you.”

Statement of Edward P [REDACTED]

Edward P [REDACTED] was in his apartment at 1025 N. Los Robles Avenue at approximately 9:05 a.m. when he heard approximately three to four gunshots. He looked out of his bedroom window and saw “a guy,” later identified as Flores “get shot” and heard commands from two police officers.²² P [REDACTED] believed he heard the officers say, “stop running.” P [REDACTED] said the officers then shot at Flores. Flores was not responding to their commands and while fleeing from police officers, he turned to his side (demonstrated by placing his right arm under his left arm) at which time P [REDACTED] heard two gunshots. At one point in his interview, P [REDACTED] said he was unsure if the officers shot Flores, however, P [REDACTED] believed the two officers were shot at before Flores was shot. Flores “shot two rounds off at the cops while he was running.” “The officers were trying to take control of the situation and he (Flores) wasn’t having any part of it.” P [REDACTED] stated that he heard “pops,” but did not see the officers shoot.²³

Statement of Brian D [REDACTED]

Brian D [REDACTED] was inside his house at 972 N. Los Robles Avenue when he heard the sound of a police siren “chirp.” D [REDACTED] believed the sound was a traffic stop being conducted by a police officer. D [REDACTED] then heard a loud aggressive male voice yelling something like, “Fuck! Fuck! Drop it! Drop it!”

¹⁹ Flores was 21 at the time of the incident.

²⁰ C [REDACTED]’s driver side window was rolled down and he had a clear unobstructed view.

²¹ C [REDACTED] tried to video the incident with his cellular phone but was unable to capture anything other than the ground. He provided several still shots to police showing the aftermath of the incident.

²² P [REDACTED] estimated that he was approximately 100 yards away from the incident.

²³ P [REDACTED]’s statement was not clear as to the order of events. Initially, P [REDACTED] stated that the officers shot at Flores but then later expressed uncertainty as to whether the officers shot at Flores.

Don't do it! Don't do it!" D■■■■ then heard 8-10 gunshots in rapid succession. D■■■■ exited his residence and heard the sound of a male moaning. He saw two police cars drive by northbound on Los Robles Avenue at a rapid pace. D■■■■ went back inside his house and remained there.

Statement of Claudio N■■■■

At the time of the incident, Claudio N■■■■ was driving his pickup truck with his daughter, Joanna, seated in the front passenger seat. As they were stopped on Mountain Street and Los Robles Avenue, N■■■■ noticed a gray sedan with a marked police vehicle directly behind it, also stopped at the intersection. The two occupants of the gray sedan were moving around and appeared to be nervous.²⁴ Once the light turned green, the police vehicle activated its emergency lights in order to conduct an enforcement stop on northbound Los Robles Avenue. At this point, N■■■■ told his daughter Joanna, "Look they're gonna run." N■■■■ believed the occupants of the gray sedan were going to flee based on their behavior he observed prior to the stop. As N■■■■ turned northbound onto Los Robles from Mountain Street, he lost sight of the police vehicle and gray sedan. As he approached Adena Street, N■■■■ saw the police vehicle stopped at the northwest corner of Los Robles and Adena Street. As N■■■■ continued to drive slowly up Los Robles Avenue, he saw a male Hispanic, later identified as Flores, running from two police officers in a northeast direction on Los Robles Avenue.²⁵ N■■■■ stopped his truck as Flores and the officers neared the east curb line of Los Robles Avenue. At this point, Flores was approximately 20-25 feet from N■■■■ truck. The officers were approximately 15-20 feet away from Flores at all times during the foot pursuit, and were offset to Flores' left. As Flores neared the east curb line of Los Robles Avenue, N■■■■ saw both officers, who were now standing side by side, take a shooting stance. N■■■■ then heard the sound of gunfire. N■■■■ heard approximately 10-12 shots, a pause, and then a few additional shots. He believed that the officers may have reloaded because afterwards he observed a magazine in the street.²⁶ When he heard the shots, N■■■■ was unable to determine if one or both officers fired because he was primarily focused on Flores at the time. N■■■■ heard no verbal commands issued to Flores.²⁷

Flores was hit by the gunfire and went down. N■■■■ observed an object skid outward from Flores' body and land on the ground. N■■■■ later determined this was a handgun, which he did not see in Flores' hands while Flores was running away from the officers. After Flores fell to the ground, both officers approached him. One handcuffed Flores while the other provided cover.²⁸

²⁴ N■■■■ described the driver of the sedan as a male Hispanic. N■■■■ did not see a female passenger in the rear seat.

²⁵ Some of the witnesses stated that two officers were pursuing Flores at the time of the shooting, however, Elhosseiny, Sailor, C■■■■ and Miron affirmed that only Elhosseiny was pursuing Flores on foot at the time of the shooting. Sailor was approaching the driver's side door of the Mustang at the time of the shooting but then quickly ran over to Elhosseiny's location.

²⁶ Elhosseiny had ejected the magazine that fell onto the street.

²⁷ At this time, N■■■■ estimated the officers to be approximately 30-40 feet from his vehicle with Flores an additional 40 feet in front of and to the northeast of the officers.

²⁸ During the incident, N■■■■ used his cell phone to record video of what occurred while seated in the driver's seat of his truck. He began recording after the shooting occurred. N■■■■ is heard on the video saying Flores had a gun but officers shot him for no reason. N■■■■ provided a copy of the cell phone video to Pasadena Star News but did not provide a copy to the PPD because he was "not asked to do so." Investigators subsequently obtained a copy of the video for this investigation.

N█████ stated that he believed the officers shot Flores for no apparent reason because he did not see Flores turn toward the officers or point a handgun at the officers, nor did he hear any gunshots before the police opened fire.²⁹

Statement of Joanna N█████

Joanna N█████ was sitting in the passenger seat of Claudio N█████ pickup truck when the incident occurred. While traveling northbound on Los Robles Avenue, Claudio said, “They are going to run.” She looked up and saw a male, later identified as Flores, running northeast across Los Robles Avenue. She saw two police officers running behind him. Claudio slowed down the truck. Flores ran across in front of their vehicle, approximately 60-70 feet in front of them. The two officers were about 20 feet behind Flores. Joanna recalled only seeing one officer with his gun out and he shot Flores while he was running after him. Joanna was not sure which officer shot Flores. She heard a total of 11 gunshots and saw Flores fall to the ground. A gun fell from Flores and landed on the sidewalk in front of him. Joanna told investigators that she was talking on her cell phone when the incident began and got off the phone after she heard the gunshots. Joanna did not see Flores shoot at the police officers. Joanna emailed the video footage from Claudio’s phone to “Pasadena Now,” a local social media site.³⁰

Firearms Examinations

Flores was armed with a Hi-Point, model C9, 9mm firearm. When fully loaded, this firearm has a maximum capacity of eleven cartridges. At the time it was retrieved from the street by Elhosseiny, there were six cartridges in the magazine and one cartridge in the chamber. Three expended cartridge cases recovered from the scene were identified as having been fired from this weapon.³¹ Therefore, Flores fired three or four shots from this weapon.

DNA testing was conducted on various parts of this firearm. A DNA sample was extracted from a swab of the gun’s frame and slide. The DNA sample was a mixture, consistent with two contributors. Flores’ profile is consistent with being a contributor to the DNA sample taken from the gun’s frame and slide. The random match probability estimate for that sample is one in 17 billion. No conclusions could be made regarding the other potential contributor to the mixture.

A forensic examination of a black tee shirt worn by Flores at the time of the shooting detected numerous particles consistent with gunshot residue.³² The presence of these particles is consistent with the tee shirt having been in an environment of gunshot primer residue.

Elhosseiny was armed with a Glock, model 21, .45 semiautomatic firearm. When fully loaded, this firearm has a maximum capacity of fourteen cartridges. He also utilized a second magazine loaded with thirteen cartridges. Following the shooting, an examination of Elhosseiny’s weapon and magazines revealed twelve cartridges remaining in one magazine with one cartridge in the chamber.

²⁹ N█████ conclusion that Flores never fired a gun at police is contradicted by other witness statements and forensic evidence.

³⁰ Both Claudio and Joanna N█████ told investigators that they received no compensation from the “Pasadena Star” or “Pasadena Now” for the video that they provided.

³¹ No projectiles were recovered.

³² The black tee shirt was removed from Flores at the scene by paramedics and collected by crime scene investigators.

Thirteen empty cartridge cases were recovered from the scene. Therefore, Elhosseiny fired thirteen or fourteen shots from his duty weapon.³³

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

The right of self-defense is the same whether the danger is real or apparent. If a person acted from reasonable and honest convictions he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken. *People v. Jackson* (1965) 233 Cal. App. 2d 639. In protecting himself or another, a person may use all force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent injury which appears to be imminent. *See also*, CALCRIM No. 3470.

“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . .The calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Graham v. Connor* (1989) 490 U.S. 386, 396-397. The reasonableness of the force used “requires careful attention to the facts and circumstances” of the particular incident. *Id.* at 396. “[T]hus, under *Graham*, we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” *Smith v. Freland* (6th Cir. 1992) 954 F, 2d 343, 347.

CONCLUSION

The evidence examined in this investigation shows that during a lawful traffic stop, Francisco Flores ran from a vehicle and a foot pursuit ensued. While running, Flores took out a gun and positioned his right arm over and behind his left shoulder and began shooting behind him in the direction of Elhosseiny who was running between five to twenty feet behind him. Fearing for his life, Elhosseiny returned fire, hitting Flores once in the back and ending the threat. We conclude that Officer Elhosseiny acted lawfully in the reasonable belief that self-defense was warranted. We are closing our file and will take no further action in this matter.

³³ Seven bullet or bullet jacket fragments consistent with .45 semiautomatic ammunition were recovered from the scene.